



**Department of  
Communications  
Information Technology  
and the Arts**

**CASUALTIES OF TELSTRA (COT)**  
**BACKGROUND AND INFORMATION FOR  
MINISTER'S OFFICE**

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## Arbitration of AUSTEL

AUSTEL recommendations according to the arbitration processes were to:

- ◆ Ensure that Telstra followed recommendations from the report by Bell Canada.
- ◆ Ensure that restoration times were within reasonable time limits.
- ◆ Implement an arbitration process.
- ◆ Retrain staff to ensure that customers were aware of the *Trade Practices Act 1974* and to also refer customers to the TIO.
- ◆ Provide all new customers with a user friendly summary of terms and conditions regarding the services that Telstra provided.
- ◆ Ensure that all faults were recorded.
- ◆ Retain all records of a customer's history of fault reporting until dispute between customer and Telstra was rectified.
- ◆ Provide the customer with a written report of suspected fault and to include: period of when service was monitored, equipment used, results of monitoring and Telstra conclusion.
- ◆ Retain record of faults for 5 years.
- ◆ Introduce a national system whereby if a fault wasn't rectified at one level within a specified time, it is to be escalated to the next level of management for resolution.
- ◆ Reduce the majority of difficult network faults, that reduced levels of service, within 3-6 months and for it to be completed within 12 months.
- ◆ Devise plans to reduce the timeframes for fixing faults and to inform customers accordingly.
- ◆ Advise customers of outcome of monitoring/testing faults and to state limitations of its monitoring/testing regime.
- ◆ Ensure that staff didn't assume that a customer's problem was unique, before cause of fault was found.
- ◆ Ensure staff did not recommend an upgrade of equipment before identifying fault.
- ◆ Ensure staff gave completed reports to third parties involved in resolution of faults.
- ◆ Provide a more timely response to FOI requests.
- ◆ Retain open levels of communication even if the customer had involved legal representatives.
- ◆ Resolve outstanding compensation claims as quickly as possible.
- ◆ Describe payments made in settlement of claims, by customers with faults, as compensation.
- ◆ Apologise to \_\_\_\_\_ for voice \_\_\_\_\_ S 41  
monitoring/recording without consent.
- ◆ Advise all customers by bill insert if voice monitoring was to occur for maintenance of services.
- ◆ Reinforce policies and procedures by specific retraining of relevant staff.

## 2. Senate Parliamentary Committees

The Senate Committee on Environment, Recreation, Communication and Arts Legislation Committee established a Working Party (WP).

### Background of Working Party

Senator Tierney, Chair of the Senate Committee on Environment, Recreation, Communication and Arts Legislation Committee wrote to Telstra on 29 September 1997 concerning evidence provided in two Senate Committee hearings on the issue of matters arising from the Committee's consideration of Telstra's Annual Report (1995-1996), COT cases and related cases.

Senator Tierney advised Telstra of claimants' dissatisfaction with Telstra's provision of information to complainants, both through the arbitration processes and through requests made under Freedom of Information (FOI). Areas of concern identified included:

- ◆ The large amounts of relevant documentation that existed and the difficulty experienced by individuals in identifying specific areas or subjects that would facilitate a search under FOI;
- ◆ The difficulty experienced by laymen in understanding the documents provided and the absence of any summary documents which would facilitate comprehension of documents received; and
- ◆ The difficulties in obtaining required documentation within a reasonable time and without incurring unnecessary expense.

The Committee requested Telstra to develop a list of all documents reviewed in the course of its preparation of its defence in relation to outstanding arbitration cases, responses to requests under FOI, and appeals in respect of cases already decided. The requested documentation was to include Excel files and any other relevant documents that at the time had not been made available to the above parties.

The Committee also asked Telstra to establish a working party, comprising a representative from Telstra, two representatives from COT and a representative from the Commonwealth Ombudsman's office.

### Members of Working Party

The WP comprised of two COT representatives, representative, Mr Armstrong, and the Chair, a person nominated by the Commonwealth Ombudsman. The Ombudsman nominated Mr Wynack.

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### Objective

The WP was established to report to the Committee on specified matters concerning Telstra and COT/related COT cases. The main objectives were to:

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1. Develop a list of documents to be sorted into specific categories, and to provide specified information;
2. Investigate whether there were avenues not explored by Telstra to locate documents;
3. Report to the Committee;
  - To follow 1 and 2 above;
  - To provide an assessment of the processes used by Telstra in the provision of information to the Parties and to make recommendations as to additional or improved processes which Telstra would adopt;
  - To make recommendations whether any list should be provided to the Parties;
  - To decide whether any documents Telstra had claimed privileged or confidential should be provided to the Parties; and
  - If any of the Telstra documents should be provided and on what terms.

### 3. Original COT Members Complaint

*No ring received* – when a caller dialled the number, heard the phone ringing, but at the other end, no ring tone was heard.

*Busy when not* – when a caller dialled a number, heard a busy tone, but the phone at the premises was not in use.

*Call drop out* – when a call was successful, but during the call or when the call was first picked up, call was disconnected.

*Recorded voice announcement* – when the caller received a recorded voice message stating that the number had been disconnected, when the number was still connected.

*Rotary problems* – businesses that had 2 or 3 phone numbers but only advertised one. If a call was received and the main line was busy the system would search for a free line. With these businesses, the calls were only able to get through if the main line was made busy.

#### Original Members

Mr Alan Smith, Cape Bridgewater Holiday Camp - Cape Bridgewater, Victoria

Mrs Ann Garms, Tivoli Restaurant - Fortitude Valley, Queensland

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#### History

##### Alan Smith:

- Operated the Cape Bridgewater Holiday Camp, in Cape Bridgewater, Victoria.
- Reported problems with his telephone system from 1992

- ◆ Started the Fast Track Settlement Procedure in 1993, abandoned 6 months later.
- ◆ Entered the Fast Track Arbitration Procedure (FTAP) in November 1994, which was completed and was awarded a settlement in May 1995. Alleged that processes were hampered by delays in FOI compliance by Telstra.
- ◆ Tried to sell his business in mid 1995, but was unable to sell, due to ongoing telephone problems.

Ann Garms:

- ◆ Owned the Tivoli Theatre Restaurant in Fortitude Valley, QLD.
- ◆ Reported telephone problems from 1984. Complaint: no ring received, call drop out, "busy" tone when not busy.
- ◆ Telstra offered 2 ex gratia payments, one in January 1993 and the other June 1993, both were refused.
- ◆ Began Fast Track Settlement Procedure in November 1993 which ceased 6 months later.
- ◆ Entered the FTAP in November 1994.
- ◆ The Commonwealth Ombudsman released a report in May 1996 supporting Ms Garms claims against Telstra's handling of her FOI applications, which included lengthy delays.
- ◆ The Ombudsman made a recommendation that Telstra pay Ms Garms compensation for these delays. Telstra advised the Ombudsman that it would liaise with the Ombudsman regarding the compensation.
- ◆ Ms Garms made a claim for compensation in November 1996.
- ◆ Award determined August 1996.
- ◆ Was awarded \$600,000 (which she appealed to the Supreme Court of Victoria and lost).
- ◆ Was awarded \$237,420.49 from the TIO for 'reasonable costs' - see Attachment A.

- ◆ Owned a courier service called
- ◆ Complained of service difficulties for over six years.
- ◆ Purchased a Flexitel in 1987. He then complained of network and other problems associated with the Flexitel.
- ◆ An extensive network investigation was conducted at the time of complaints (1987-1989). Telstra identified some congestion which was immediately fixed. S 41
- ◆ A claim was made under *Trade Practices Act* for compensation totalling ..... It was settled by payment into court without admission of liability by Telstra on 30 March 1993. The amount was settled on the advice from
- ◆ The amount was less than the .....  
chose to accept the offer without further negotiation.

- ◆ Owned the business S 41
- ◆ Had problems of connection of calls.

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- Owned the \_\_\_\_\_ in Melbourne.
  - Had problems with connection of calls.
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#### Later COT Members

Ross Plowman (Bentiner Private

#### 4. Internal Action by Telstra

DC Campbell (Group Managing Director of Commercial and Consumer) wrote to  
16 September 1992. In that letter he stated:

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1. That Telstra needed to move quickly to finalise the problems experienced by the COT members so that the problems could be rectified.
  2. Questioned the possibility of Telstra providing people to work with COT members in their businesses for a period of 10 days to experience the problems first hand.
  3. Questioned the idea of setting up recording equipment on all lines to monitor performance and to carefully monitor the performance of exchange for all numbers.
  4. Telstra would also make test calls from various locations from the businesses to see if the complaints of not receiving ring, false busy tones etc, could be identified and corrected.
  5. Suggested that COT members consider the idea of being reassigned to another exchange with the possibility of another number. This would require the members to sign a waiver of any claim for business losses due to the number change. Telstra would also change the numbers in the Yellow Pages as appropriate. It would also assist financially with advertising as well as establish the necessary voice recording announcing the new number.
  6. Telstra would endeavour to complete all investigations and rectify all problems by 30 October 1992.
  7. ~~If the problems have been identified and resolved by that date, Telstra would enter discussions with the COT members to decide whether compensation would be appropriate.~~
  8. If an agreement could not be reached, Telstra would request Austel to appoint an independent arbitrator to resolve the conflict.
  9. Telstra would aim to have all situations involving all five members resolved completely by 30 November 1992.
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JR Holmes (Corporate Secretary, from Australian and Overseas Telecommunications Corporation, AOTC) sent a letter on 11 March 1993 to Ms Garms and regarding a proposal for an independent assessment for their loss of business. The letter offered two options, which are:

1. To have an independent assessment conducted. The disadvantage is that the process could take a long time.
2. For Telstra to provide a direct compensation settlement. The advantage is a quick settlement, but no consideration by a third party, nor any guarantee of a mutually satisfactory outcome.

Telstra believed that it had done everything possible for a fair outcome and that Telstra had exhausted all efforts to resolve the situation.

**Telstra's Term of Reference for An Independent Assessment**

In order to seek resolution in the matter of complaints by two individual members of Casualties of Telstra (COT), being Mrs Garms and Telstra and the Claimants have agreed to refer the complaints to an Independent Assessor for consideration. The Claimant's allegations shall be treated on an individual basis.

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The Independent Assessor to be appointed shall be a person who is acceptable to both AOTC and the Claimants. In this respect, the parties agree to approach the President of the Law Society of Queensland.

The Terms of Reference for the independent assessment are as follows:

- The Independent Assessor shall initially establish whether faults existed in the telephone services provided to the Claimants and whether such faults resulted in losses to their individual businesses, the financial damage (if any) to the businesses caused by these faults and a reasonable amount of compensation for such damage.
- In establishing whether faults existed, the Independent Assessor must also establish the relevant dates at which certain faults are alleged to have occurred.
- The Independent Assessor shall determine the business losses of the Claimants since first reporting telephone faults in their respective businesses in their present locations.
- The Independent Assessor shall then establish what proportion of that business loss is attributable to problems with the telephone service, as distinct from other possible causes of business loss, not otherwise attributable to any act or omission on the part of AOTC.
- In assessing loss and damage, the Independent Assessor must have regard to all relevant circumstances, including factual and legal circumstances. On such circumstance which must be considered is the applicability (if any) of AOTC's statutory immunity and the extent of Telstra's obligations in relation to the operation of the public switched network. Bearing in mind any AOTC statutory immunity, the Independent Assessor shall determine AOTC's legal liability for

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any part of the compensation which he or she determines as being attributable to network faults prior to 1 July 1991.

- The assessment should be completed as soon as reasonably practicable as determined by the Independent Assessor. In order to assist in the timely conduct of the assessment, the Independent Assessor may engage, at the cost of AOTC, whatever consultants or other experts are reasonably necessary. However, any consultants or experts shall only be appointed with the approval of the claimants and AOTC.
- The Independent Assessor shall have access to all relevant records upon request, and for this purpose, the Claimants authorise AOTC to make available all information held by AOTC relating to the Claimants. Each party shall comply with all requests by the Independent Assessor with regard to all records and each party shall have the right to put before the Independent Assessor any relevant records. Further, each party shall have the right to call for relevant records from any other party or third parties.
- The costs in relation to the assessment shall be borne by AOTC, however, in the event that the Independent Assessor finds that AOTC is liable to pay an amount of money to the Claimants, not greater than or equal to any sum previously offered by AOTC to the Claimants before 31 January 1993, those amounts shall be applied to the cost of the assessment and paid to the Claimants. In no circumstances shall the Claimants be required to contribute to the costs of the assessment.
- The Independent Assessor must provide full reasons for his/her findings in writing. Such reasons and any subsequent settlement between the parties shall remain confidential between the Independent Assessor and parties.
- The findings of the Independent Assessor shall be recommendatory only so far as they relate to matters of law, or so far as they involve a mixture of fact and law, and shall be binding on the parties as to issues of fact.
- In the event that the parties adopt the findings of the Independent Assessor for the purpose of resolving their dispute, such adoption shall be without any admission of liability whatsoever, any payment of monies to the Claimants shall be on an ex gratia basis and shall be in full discharge of all claims which the Claimants may have against AOTC.
- In the event that the parties cannot reach an agreement based on the findings of the Independent Assessor, there shall be no further negotiations between the parties. However, in relation to the findings of fact, and in so far as they may be admissible in evidence, there shall be no impediment to the Claimants using those findings of fact in any subsequent legal proceedings.

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**5. Compensation**

Amounts claimed and received:

<b>Claimant</b>	<b>Claim</b>	<b>Settlement/Award</b>
Smith	\$3.4 million	\$320,000

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Garms (Appeal Lodged)	\$8.1 million	\$600,000
Hynninen	\$300,000 plus personal injuries	\$33,000

As at 12 August 1997 pending claims were:

Plowman	\$1.9 million loss of profits
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**Date of Payment**

<u>Name:</u>	<u>Date Received:</u>
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Smith	May 1995
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**6. Action of the Department**

The Department wrote a letter to Alan Smith on 26 May 1997, which said:

"The TIO has advised that he has completed his tasks as the administrator in your claim for compensation as a Casualties of Telstra (COT) case and has fully investigated the concerns you have raised with his office. I understand that the TIO

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has also informed you of appeal rights available to you, should you wish to take further action. The TIO is an independent body, established by the industry to investigate consumer and billing complaints and other matters that fall within its jurisdiction. As such the Minister is unable to direct the TIO in those matters. Thank you for bringing this matter to the Government's attention however, we are unable to provide any further advice on this matter." (Copy of letter page 102. file P970431.)

**7. Correspondence From Allan Smith**

Alan Smith has written to the Minister on 6 January, 5, 10, 14, 16, 17, 18, 22 and 28 April, 6 and 23 May and 5 and 6 June, 8, 10, 11, 17 and 30 July 2002, 10 and 14 August 2002 regarding his arbitration process.

**Main Issues**

- That the TIO received documented evidence that the technical resource unit was unlawfully ordered not to investigate the billing faults raised in his claim and that his phone was disconnected after the arbitration process.
- Claims that 85% of his documents prove that the TIO allowed Telstra to disconnect his business phone lines.
- Alleges that Telstra introduced a "sticky" substance to his TF 200 phone as a way to disallow Telstra's involvement in the breakdown of his telephone service and not network problems.
- Believes that there was a problem with his billing in 1995 and also in January 1998 after his arbitration.
- Claims that the Telecommunications Industry Ombudsman, John Pincock is a liar and claims that he will not receive a fair response with his request for a reassessment.
- Is wishing to put forward \$30,000 for an independent investigation into his evidence to be and the person to be appointed by the Minister's office.
- Believes that Telstra did not provide all documents under the FOI request and that it until the end of the arbitration process held 40% of documents.
- That Telstra fraudulently manufactured the TF200 report, which was used in its defence in the arbitration process.
- Is dissatisfied with the arbitrator Dr Gordon Hughes and believes he was involved in a conspiracy with Telstra and the TIO.

~~The TIO wrote to the Department on 18 July 2002 advising that it has not been presented with new evidence to support a reassessment for Mr Alan Smith. The matter is now closed.~~

**Correspondence to Treasury**

Mr Alan Smith has sent facsimiles to the Treasury Department on 8, 10, 14, 15, 21, 23 and 30 July regarding his concerns with the TIO and Telstra. All his correspondence has been immediately forwarded to our Department. Mr Smith has raised the same issues that he presented to the Minister.

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